IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

Crl.MC.No. 3095 of 2004()

CC.878/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER:

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1. M.A.THAMPI, MUNDADAN HOUSE,
   ANGAMALY P.O.

2. A.G.VIJAYA CHANDRAMENON,
   (NOMINEE OF M.V.J. FOODS INDIA PVT. LTD.),
   SINDHU VIHAR, DESOM P.O., ALUVA-683 103.

3. M.V.J.FOODS INDIA PVT. LTD.,
   REGISTERED OFFICE, H.B.NO.7,
   PANAMPALLY NAGAR, KOCHI-36, REPRESENTED BY
   A.G.VIJAYA CHANDRAMENON.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

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1. FOOD INSPECTOR,
   ANGAMALY MUNICIPALITY.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.3095 of 2004

DATED THIS THE 20TH DAY OF NOVEMBER 2006

ORDER

The petitioners are the accused in C.C.No.878/2003 in the file of the Judicial First class magistrate Court-II, Aluva with respect to the offences under Sections 2(ia)(a)(c),7(i)(ii)(v) read with Section 16 (1)a(i), 17(1)(a)(i)(b) of the Prevention of food adulteration Act, 1954 and Rule 32(b) and Appendix'B' item A-05-21 of Prevention of Food Adulteration Rules 1955. It is the contention of the petitioners who included the manufacturers that the petitioners' products known by the brand name Melam has been acclaimed by a a number of institutions for the quality of its products. It is pointed out that the sample of the sambar powder was taken on 16-1-2003 and the manufacturing date is 12/02. The allegation in the complaint is that the sample was found to be adulterated and misbranded. It is pointed out that as per the report of the Public Analyst, the sample contained sodium chloride as a filler to the extent of not less than 28% and hence the same is adulterated and also misbranded under Rule 32(b) of the P.F.A.Rules. It is pointed out that the accused had exercised the option provided in the statute to have the sample analysed by the Central Food

Laboratory and the certificate of the Central food Laboratory has cleared the petitioners of the alleged allegation.

2. Counsel for both sides were heard.

3. I find that the alleged violation of the standard specified vide A-05-01 as noted in Annexure-B report of the Public Analyst of the State Government has been disproved in the test taking it as proprietary food, by the Central Food Laboratory which is evident from Annexure-C. Hence, as per Section 13(3) the report of the Central Food Laboratory supersedes the report of the Public Analyst. The prosecution for the alleged adulteration cannot be sustained.

4. So far as misbranding is concerned, it is mentioned in the report of the Central Food Laboratory that the sample contravened Rule 42 ZZZ (17) of the P.F.A.Rules. I find that Rule 42 ZZZ (17) came into effect from 20/6/2002 vide GSR 908(E). The sample was collected on 16-1-2003. The amendment as per which Rule 42 ZZZ (17) came into effect from 20/6/2002 vide GSR 908(E). It is submitted by counsel for the petitioner that the product was manufactured in December 2002 whereas the amendment came into effect on 20-6-2002. The amendment was not noted by the manufacturer at the time it is submitted. Subsequently the above symbol as specified by Rule 42 ZZZ(17) has been printed on the package. Counsel for the

petitioner has also produced the packet containing the particular symbol on the packet of the sambar powder. It is only a difference of six months since the commencement of Rule 42 ZZZ(17) and the date of manufacture. In the instant case, I find that the contingency envisaged under Section 95 I.P.C.is attracted. Taking into consideration the nature of the violation alleged, I find that the prosecution is not liable to be sustained.

In the result, the proceedings pending as C.C.No.878/2003 in the file of the Judicial First Class Magistrate Court-II, Aluva is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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